

115TH CONGRESS
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To authorize appropriations for border infrastructure construction, to provide conditional resident status to certain aliens, and to amend the Immigration and Nationality Act to include grounds of inadmissibility and deportability for alien members of criminal gangs and cartels, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 5, 2017

Mr. FLAKE introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To authorize appropriations for border infrastructure construction, to provide conditional resident status to certain aliens, and to amend the Immigration and Nationality Act to include grounds of inadmissibility and deportability for alien members of criminal gangs and cartels, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Security and
5 Deferred Action Recipient Relief Act”.

1 **SEC. 2. DEFINITION OF SECRETARY.**

2 In this Act, the term “Secretary” means the Sec-
3 retary of Homeland Security.

4 **SEC. 3. BORDER INFRASTRUCTURE CONSTRUCTION.**

5 (a) BORDER SECURITY TRUST FUND.—

6 (1) ESTABLISHMENT.—There is established in
7 the Treasury of the United States a trust fund, to
8 be known as the “Border Security Trust Fund” (re-
9 ferred to in this section as the “Trust Fund”), con-
10 sisting of the amounts transferred from the general
11 fund of the Treasury under paragraph (2).

12 (2) DEPOSITS.—Not later than the date that is
13 the later of the date of enactment of this Act and
14 September 30, 2020, the Secretary of the Treasury
15 shall deposit in the Trust Fund, from the general
16 fund of the Treasury, \$1,571,239,000, to remain
17 available until expended.

18 (3) REPAYMENT OF COSTS.—

19 (A) IN GENERAL.—The Secretary of the
20 Treasury shall use any Federal tax liability col-
21 lected by the Secretary of the Treasury under
22 section 244A(d)(6) of the Immigration and Na-
23 tionality Act to recover the amount described in
24 paragraph (2).

25 (B) SURCHARGE AUTHORIZED.—The Sec-
26 retary may impose on any conditional perma-

1 nent resident (as defined in section 244A(a) of
2 the Immigration and Nationality Act) a sur-
3 charge in an amount determined by the Sec-
4 retary to be the minimum proportional amount
5 necessary to recover the amount equal to the
6 difference between—

7 (i) the amount described in paragraph
8 (2); and

9 (ii) the amount collected under sub-
10 paragraph (A).

11 (b) BORDER SECURITY EXPENDITURES.—Amounts
12 in the Trust Fund shall be available without further ap-
13 propriation for procurement, construction, and improve-
14 ments as follows:

15 (1) \$784,000,000 for 32 miles of new border
16 bollard fencing in the Rio Grande Valley in the State
17 of Texas.

18 (2) \$498,000,000 for 28 miles of new bollard
19 levee wall in the Rio Grande Valley in the State of
20 Texas.

21 (3) \$251,000,000 for 14 miles of secondary
22 fencing in San Diego, California.

23 (4) \$38,239,000 for planning activities relating
24 to border wall construction.

1 **SEC. 4. CANCELLATION OF REMOVAL OF CERTAIN LONG-**
 2 **TERM RESIDENTS WHO ENTERED THE**
 3 **UNITED STATES AS CHILDREN.**

4 (a) IN GENERAL.—Chapter 4 of title II of the Immi-
 5 gration and Nationality Act (8 U.S.C. 1221 et seq.) is
 6 amended by adding at the end the following:

7 **“SEC. 244A. CANCELLATION OF REMOVAL OF CERTAIN**
 8 **LONG-TERM RESIDENTS WHO ENTERED THE**
 9 **UNITED STATES AS CHILDREN.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) ACTIVE DUTY.—The term ‘active duty’ has
 12 the meaning given the term in section 101 of title
 13 10, United States Code.

14 “(2) ACTIVE SERVICE.—The term ‘active serv-
 15 ice’ has the meaning given the term in section 101
 16 of title 10, United States Code.

17 “(3) ACTIVE STATUS.—The term ‘active status’
 18 has the meaning given the term in section 101 of
 19 title 10, United States Code.

20 “(4) ALIEN ENLISTEE.—The term ‘alien en-
 21 listee’ means a conditional permanent resident who
 22 seeks to maintain or extend conditional permanent
 23 resident status by means of satisfaction of the re-
 24 quirements of this section relating to enlistment and
 25 service in the Armed Forces.

1 “(5) ALIEN POSTSECONDARY STUDENT.—The
 2 term ‘alien postsecondary student’ means a condi-
 3 tional permanent resident who seeks to maintain or
 4 extend such conditional permanent resident status
 5 by means of satisfaction of the requirements of this
 6 section relating to enrollment in, and graduation
 7 from, an institution of higher education.

8 “(6) ARMED FORCES.—The term ‘Armed
 9 Forces’ has the meaning given the term ‘armed
 10 forces’ in section 101 of title 10, United States
 11 Code.

12 “(7) CONDITIONAL PERMANENT RESIDENT.—
 13 The term ‘conditional permanent resident’ means an
 14 alien who is granted conditional permanent resident
 15 status under subsection (b)(1)(A).

16 “(8) CONVICTION.—

17 “(A) IN GENERAL.—Subparagraph (B) of
 18 section 101(a)(48) shall not apply to the term
 19 ‘conviction’.

20 “(B) EXCLUSIONS.—The term ‘conviction’
 21 does not include—

22 “(i) an adjudication or judgment of
 23 guilt that has been dismissed, expunged,
 24 deferred, annulled, invalidated, withheld, or
 25 vacated;

1 “(ii) an order of probation without
2 entry of judgment; or

3 “(iii) any similar disposition.

4 “(9) INSTITUTION OF HIGHER EDUCATION.—

5 “(A) IN GENERAL.—The term ‘institution
6 of higher education’ has the meaning given the
7 term in section 102 of the Higher Education
8 Act of 1965 (20 U.S.C. 1002).

9 “(B) EXCLUSION.—The term ‘institution
10 of higher education’ does not include an institu-
11 tion of higher education outside the United
12 States.

13 “(10) SECRETARY.—The term ‘Secretary’
14 means the Secretary of Homeland Security.

15 “(b) CANCELLATION OF REMOVAL OF CERTAIN
16 LONG-TERM RESIDENTS WHO ENTERED THE UNITED
17 STATES AS CHILDREN.—

18 “(1) SPECIAL RULE FOR CERTAIN LONG-TERM
19 RESIDENTS WHO ENTERED THE UNITED STATES AS
20 CHILDREN.—

21 “(A) IN GENERAL.—Notwithstanding any
22 other provision of law and except as otherwise
23 provided in this section, the Secretary may can-
24 cel the removal of, and grant conditional per-
25 manent resident status to, an alien who—

1 “(i) meets the qualifications described
2 in subparagraph (B); and

3 “(ii)(I) is inadmissible under section
4 212(a) or deportable under section 237(a);
5 or

6 “(II) is the child of an alien who is
7 lawfully present in the United States pur-
8 suant to the status described in section
9 101(a)(15)(E)(ii).

10 “(B) QUALIFICATIONS.—To qualify for
11 cancellation of removal or conditional perma-
12 nent resident status under subparagraph (A),
13 an alien shall submit an application and sup-
14 porting documentation that demonstrates by
15 the preponderance of the evidence that—

16 “(i) the alien has been physically
17 present in the United States for a contin-
18 uous period since January 1, 2012;

19 “(ii) on the date on which the alien
20 initially entered the United States, the
21 alien was under 16 years of age;

22 “(iii) in the case of an alien who is 18
23 years of age or older on the date on which
24 the alien submits an application under this
25 subsection, the alien has—

1 “(I) earned—

2 “(aa) a high school diploma;

3 or

4 “(bb) a commensurate alter-
5 native award from a public or
6 private high school or secondary
7 school;

8 “(II) obtained—

9 “(aa) a general education
10 development certificate recog-
11 nized under State law; or

12 “(bb) a high school equiva-
13 lency diploma in the United
14 States;

15 “(III) been admitted to an insti-
16 tution of higher education; or

17 “(IV) valid employment author-
18 ization;

19 “(iv) the alien has been a person of
20 good moral character since the date on
21 which the alien initially entered the United
22 States;

23 “(v) subject to subparagraph (C)—

24 “(I) the alien is not inadmissible
25 under paragraph (1), (2), (3), (4),

1 (6)(E), (8), (10)(A), (10)(C), or
2 (10)(D) of section 212(a);

3 “(II) the alien is not deportable
4 under paragraph (1)(E), (1)(G), (2),
5 (4), (5), or (6) of section 237(a);

6 “(III) the alien has not ordered,
7 incited, assisted, or otherwise partici-
8 pated in the persecution of any person
9 on account of race, religion, nation-
10 ality, membership in a particular so-
11 cial group, or political opinion; and

12 “(IV) other than an offense
13 under State or local law for which an
14 essential element is the immigration
15 status of the alien, a minor traffic of-
16 fense, or a violation of this section,
17 the alien has not been convicted of—

18 “(aa) any offense under
19 Federal or State law punishable
20 by a maximum term of imprison-
21 ment of more than 1 year; or

22 “(bb) any combination of of-
23 fenses under Federal or State
24 law, for which the alien was sen-

1 tenced to imprisonment for a
2 total of more than 1 year; and

3 “(vi) the alien has never been subject
4 to a final administrative or judicial order
5 of exclusion, deportation, or removal, ex-
6 cept if the alien—

7 “(I) has remained in the United
8 States under color of law after the
9 date on which the order was issued; or

10 “(II) received the order before
11 the date on which the alien attained
12 the age of 18 years.

13 “(C) WAIVER.—With respect to any ben-
14 efit under this section, for humanitarian pur-
15 poses, family unity, or for any other purpose for
16 which a waiver would otherwise be in the public
17 interest, the Secretary may waive—

18 “(i) subparagraph (B)(v)(IV);

19 “(ii) the grounds of inadmissibility
20 under paragraphs (1), (4), and (6) of sec-
21 tion 212(a); and

22 “(iii) the grounds of deportability
23 under paragraph (1) of section 237(a).

24 “(D) PROCEDURES.—The Secretary shall
25 provide, by regulation, a procedure that allows

1 eligible individuals to apply affirmatively for
2 conditional permanent resident status under
3 this paragraph without being placed in removal
4 proceedings.

5 “(E) SUBMISSION OF BIOMETRIC AND BIO-
6 GRAPHICAL DATA.—

7 “(i) IN GENERAL.—The Secretary
8 may not cancel the removal of an alien or
9 grant conditional permanent resident sta-
10 tus to an alien under this paragraph unless
11 the alien submits to the Secretary biomet-
12 ric and biographical data, in accordance
13 with procedures established by the Sec-
14 retary.

15 “(ii) ALTERNATIVE PROCEDURE.—
16 The Secretary shall provide an alternative
17 procedure for the submission of biometric
18 and biographical data for any applicant for
19 conditional permanent resident status who
20 is unable to provide biometric or biographi-
21 cal data due to a physical impairment.

22 “(F) BACKGROUND CHECKS.—

23 “(i) REQUIREMENT FOR BACKGROUND
24 CHECKS.—The Secretary shall use biomet-
25 ric, biographical, and other data deter-

1 mined by the Secretary to be appro-
2 priate—

3 “(I) to conduct security and law
4 enforcement background checks of
5 any alien seeking cancellation of re-
6 moval or conditional permanent resi-
7 dent status under this paragraph; and

8 “(II) to determine whether there
9 is any criminal, national security, or
10 other factor that would render the
11 alien ineligible for cancellation of re-
12 moval or conditional permanent resi-
13 dent status.

14 “(ii) COMPLETION OF BACKGROUND
15 CHECKS.—The security and law enforce-
16 ment background checks under clause (i)
17 shall be completed, to the satisfaction of
18 the Secretary, before the date on which the
19 Secretary cancels the removal of, or grants
20 conditional resident status to, the alien
21 under this paragraph.

22 “(G) MEDICAL EXAMINATION RE-
23 QUIRED.—

24 “(i) IN GENERAL.—An alien who ap-
25 plies for cancellation of removal or condi-

1 tional permanent resident status under this
2 paragraph shall undergo a medical obser-
3 vation and examination in accordance with
4 the policies and procedures prescribed
5 under clause (ii).

6 “(ii) PROCEDURES.—The Secretary,
7 with the concurrence of the Secretary of
8 Health and Human Services, shall pre-
9 scribe policies and procedures for the na-
10 ture and timing of medical observations
11 and examinations for aliens applying for
12 cancellation of removal or conditional per-
13 manent resident status under this para-
14 graph.

15 “(H) MILITARY SELECTIVE SERVICE.—An
16 alien subject to registration under the Military
17 Selective Service Act (50 U.S.C. App. 451 et
18 seq.) who applies for cancellation of removal or
19 conditional permanent resident status under
20 this paragraph shall provide to the Secretary
21 evidence that the alien has registered that Act.

22 “(2) TERMINATION OF CONTINUOUS PERIOD.—
23 For purposes of this subsection, any period of con-
24 tinuous residence or continuous physical presence in
25 the United States of an alien who applies for can-

1 cellation of removal or conditional permanent resi-
 2 dent status under paragraph (1) shall not terminate
 3 on the date on which the alien is served a notice to
 4 appear under section 239(a).

5 “(3) TREATMENT OF CERTAIN BREAKS IN
 6 PRESENCE.—

7 “(A) IN GENERAL.—For purposes of para-
 8 graph (1)(B)(i), an alien shall be considered to
 9 have failed to maintain continuous physical
 10 presence in the United States if the alien has
 11 remained outside the United States—

12 “(i) for any period of more than 90
 13 days; or

14 “(ii) for 2 or more periods the total of
 15 which is more than 180 days.

16 “(B) EXTENSION FOR EXCEPTIONAL CIR-
 17 CUMSTANCES.—The Secretary may extend a
 18 time period described in clause (i) or (ii) of sub-
 19 paragraph (A) by not more than 90 days if an
 20 alien demonstrates that the failure of the alien
 21 to timely return to the United States was due
 22 to exceptional circumstances, which shall be no
 23 less compelling than—

24 “(i) the serious illness of the alien; or

1 “(ii) the death or serious illness of a
2 parent, grandparent, sibling, or child of
3 the alien.

4 “(4) REGULATIONS.—

5 “(A) INITIAL PUBLICATION.—Not later
6 than 180 days after the date of enactment of
7 this section, the Secretary shall publish in the
8 Federal Register interim regulations to imple-
9 ment this subsection.

10 “(B) INTERIM REGULATIONS.—Notwith-
11 standing section 553 of title 5, United States
12 Code, the interim regulations published under
13 subparagraph (A)—

14 “(i) shall be effective, on an interim
15 basis, immediately on the date on which
16 the regulations are published; but

17 “(ii) may be subject to change and re-
18 vision after public notice and a period of
19 public comment.

20 “(C) FINAL REGULATIONS.—Within a rea-
21 sonable period after the publication of the in-
22 terim regulations under subparagraph (A), the
23 Secretary shall publish final regulations to im-
24 plement this subsection.

1 “(5) REMOVAL OF ALIEN.—The Secretary may
2 not remove any alien who—

3 “(A) has a pending application for condi-
4 tional permanent resident status under this
5 subsection; or

6 “(B)(i) establishes prima facie eligibility
7 for cancellation of removal or conditional per-
8 manent resident status under paragraph (1);
9 and

10 “(ii) is provided a reasonable opportunity
11 to submit an application under that paragraph.

12 “(c) CONDITIONAL PERMANENT RESIDENT STA-
13 TUS.—

14 “(1) LENGTH OF STATUS.—Conditional perma-
15 nent resident status granted under subsection (b)(1)
16 shall be valid for an initial period of 5 years, subject
17 to termination under paragraph (4).

18 “(2) DESCRIPTION OF STATUS.—A conditional
19 permanent resident—

20 “(A) shall not be considered to be an alien
21 who is unlawfully present in the United States
22 for purposes of the immigration laws, including
23 section 505 of the Illegal Immigration Reform
24 and Immigrant Responsibility Act of 1996 (8
25 U.S.C. 1623);

1 “(B) shall be considered to be an alien
2 lawfully admitted for permanent residence in
3 the United States on a conditional basis;

4 “(C) shall be considered to have the intent
5 to permanently reside in the United States;

6 “(D) shall not be required to have a for-
7 eign residence that the alien has no intention of
8 abandoning; and

9 “(E) shall be considered to have been in-
10 spected and admitted for the purposes of sec-
11 tion 245(a).

12 “(3) TERMS OF CONDITIONAL PERMANENT
13 RESIDENT STATUS.—

14 “(A) EMPLOYMENT.—A conditional perma-
15 nent resident shall be authorized—

16 “(i) to be employed in the United
17 States incident to conditional permanent
18 resident status; and

19 “(ii) to enlist in the Armed Forces
20 under section 504(b)(1)(D) of title 10,
21 United States Code.

22 “(B) TRAVEL.—A conditional permanent
23 resident may—

24 “(i) travel outside the United States;
25 and

1 “(ii) if otherwise admissible, be admit-
 2 ted on return to the United States without
 3 obtaining a visa if—

4 “(I) the conditional permanent
 5 resident is the bearer of valid, unex-
 6 pired documentary evidence of condi-
 7 tional permanent resident status; and

8 “(II)(aa) the absence of the con-
 9 ditional permanent resident from the
 10 United States was for a period of not
 11 more than 180 days; or

12 “(bb) the conditional permanent
 13 resident was outside the United States
 14 due to active service in the Armed
 15 Forces.

16 “(4) TERMINATION OF STATUS.—

17 “(A) IN GENERAL.—The Secretary shall
 18 terminate the conditional permanent resident
 19 status of an alien if the Secretary determines
 20 that—

21 “(i) the alien is 18 years of age or
 22 older; and

23 “(ii)(I) in the case of—

24 “(aa) an alien postsecondary stu-
 25 dent, the alien has failed—

1 “(AA) to enroll in an ac-
2 credited institution of higher edu-
3 cation within 1 year after the
4 date on which the alien was
5 granted conditional permanent
6 resident status; or

7 “(BB) to remain enrolled in
8 an accredited institution of high-
9 er education as of the date that
10 is 1 year after the date on which
11 the alien was granted conditional
12 permanent resident status;

13 “(bb) an alien described in sub-
14 section (b)(1)(B)(iii), during the 5-
15 year period beginning on the date on
16 which the alien was granted condi-
17 tional permanent resident status, the
18 alien has not been employed for a
19 total period of not less than 4 years;
20 or

21 “(cc) an alien enlistee, the
22 alien—

23 “(AA) failed to enlist, and
24 be accepted for enlistment, in the
25 Armed Forces within 270 days

1 after the date on which the alien
2 was granted conditional perma-
3 nent resident status; or

4 “(BB) has received a dis-
5 honorable or other than honor-
6 able discharge from the Armed
7 Forces;

8 “(II) the alien ceases to meet the re-
9 quirements of clause (iv) or (v) of sub-
10 section (b)(1)(B); or

11 “(III) the alien has become a public
12 charge.

13 “(B) RETURN TO PREVIOUS IMMIGRATION
14 STATUS.—An alien whose conditional perma-
15 nent resident status is terminated under sub-
16 paragraph (A) shall return to the immigration
17 status of the alien on the day before the date
18 on which the alien was granted conditional per-
19 manent resident status.

20 “(5) EXTENSION OF STATUS.—

21 “(A) IN GENERAL.—With respect to an
22 alien granted conditional permanent resident
23 status under subsection (b)(1), the Secretary
24 shall extend the period of conditional perma-
25 nent resident status of the alien for an addi-

1 tional period of 5 years if the alien meets each
2 of the applicable requirements described in sub-
3 paragraph (B).

4 “(B) REQUIREMENTS.—

5 “(i) GOOD MORAL CHARACTER.—The
6 alien has demonstrated good moral char-
7 acter for the entire period during which
8 the alien has been a conditional permanent
9 resident.

10 “(ii) COMPLIANCE.—The alien meets
11 the qualification described in subsection
12 (b)(1)(B)(v).

13 “(iii) NO ABANDONMENT OF RESI-
14 DENCE.—

15 “(I) IN GENERAL.—The alien has
16 not abandoned the residence of the
17 alien in the United States.

18 “(II) PRESUMPTION.—

19 “(aa) IN GENERAL.—For
20 purposes of this clause, except as
21 provided in item (bb), the Sec-
22 retary shall presume that an
23 alien has abandoned the resi-
24 dence of the alien in the United
25 States if, during the period of

1 conditional permanent resident
2 status of the alien, the alien is
3 absent from the United States
4 for more than 365 days in the
5 aggregate.

6 “(bb) EXCEPTION.—Not-
7 withstanding an absence from the
8 United States of more than 365
9 days in the aggregate during the
10 period of conditional permanent
11 resident status of an alien, the
12 presumption described in item
13 (aa) shall not apply if the alien
14 demonstrates, to the satisfaction
15 of the Secretary, that the alien
16 has not abandoned the residence
17 of the alien in the United States.

18 “(iv) GRADUATION.—In the case of an
19 alien postsecondary student, the alien—

20 “(I) is 18 years of age or older;
21 and

22 “(II) has graduated from an ac-
23 credited institution of higher edu-
24 cation.

1 “(v) EMPLOYMENT.—In the case of
 2 an alien described in subsection
 3 (b)(1)(B)(iii), during the 5-year period be-
 4 ginning on the date on which the alien was
 5 granted conditional permanent resident
 6 status, the alien has been employed for a
 7 total period of not less than 4 years.

8 “(vi) ENLISTMENT.—In the case of an
 9 alien enlistee—

10 “(I) the alien has served as a
 11 member of a regular or reserve com-
 12 ponent of the Armed Forces in an ac-
 13 tive duty status for not less than 3
 14 years; and

15 “(II) if the alien has been dis-
 16 charged, the alien received an honor-
 17 able discharge.

18 “(d) REMOVAL OF CONDITIONAL BASIS FOR PERMA-
 19 NENT RESIDENCE.—

20 “(1) APPLICATION TO REMOVE CONDITIONS.—

21 “(A) IN GENERAL.—A conditional perma-
 22 nent resident may submit to the Secretary, in
 23 accordance with paragraph (3), an applica-
 24 tion—

1 “(i) to remove the conditional basis of
2 permanent residency; and

3 “(ii) to have the status of the alien
4 adjusted to that of an alien lawfully admit-
5 ted for permanent residence.

6 “(B) CONTENTS.—With respect to any ap-
7 plication submitted under subparagraph (A), an
8 alien shall include, under penalty of perjury, the
9 facts and information necessary for the Sec-
10 retary to make the determination described in
11 paragraph (2)(A).

12 “(2) ADJUDICATION OF APPLICATION FOR AD-
13 JUSTMENT OF STATUS.—

14 “(A) IN GENERAL.—With respect to an ap-
15 plication submitted under paragraph (1) for an
16 alien, the Secretary shall make a determination
17 as to whether the alien meets the requirements
18 described in paragraph (4).

19 “(B) ADJUSTMENT OF STATUS IF FAVOR-
20 ABLE DETERMINATION.—Notwithstanding any
21 other provision of law, including paragraphs
22 (2), (3), (4), and (8) of section 245(c), if the
23 Secretary determines that an alien meets the
24 requirements described in paragraph (4)(B),
25 the Secretary shall—

1 “(i) approve the application;

2 “(ii) notify the alien of the determina-
3 tion; and

4 “(iii) adjust the status of the alien to
5 the status of an alien lawfully admitted for
6 permanent residence, which shall be effec-
7 tive as of the date of approval of the appli-
8 cation.

9 “(C) TERMINATION IF ADVERSE DETER-
10 MINATION.—If the Secretary determines that
11 the alien does not meet the requirements de-
12 scribed in paragraph (4)(B), the Secretary
13 shall—

14 “(i) deny the application;

15 “(ii) notify the alien of the determina-
16 tion; and

17 “(iii) terminate the conditional perma-
18 nent resident status of the alien as of the
19 date of the determination.

20 “(3) TIME TO FILE APPLICATION.—

21 “(A) IN GENERAL.—An alien shall submit
22 an application for adjustment of status during
23 the period beginning on the date on which the
24 alien obtains an extension of status under sub-
25 section (c)(5) and ending on—

1 “(i) the date that is 10 years after the
 2 date on which the Secretary initially grant-
 3 ed conditional permanent resident status to
 4 the alien; or

5 “(ii) the date on which the conditional
 6 permanent resident status of the alien, as
 7 extended by the Secretary under subsection
 8 (c)(5), expires.

9 “(B) STATUS DURING PENDENCY.—Dur-
 10 ing any period in which the application of an
 11 alien for adjustment of status under this sub-
 12 section is pending, an alien shall be considered
 13 to be in conditional permanent resident status.

14 “(4) CONTENTS OF APPLICATION.—

15 “(A) IN GENERAL.—An application to re-
 16 move conditions and adjust status under para-
 17 graph (1) shall contain information necessary
 18 for the Secretary to determine whether the alien
 19 meets each of the requirements described in
 20 subparagraph (B).

21 “(B) REQUIREMENTS.—

22 “(i) GOOD MORAL CHARACTER.—The
 23 alien has demonstrated good moral char-
 24 acter for the entire period during which

1 the alien has been a conditional permanent
2 resident.

3 “(ii) COMPLIANCE.—The alien meets
4 the requirements of subsection
5 (b)(1)(B)(v).

6 “(iii) NO ABANDONMENT OF RESI-
7 DENCE.—

8 “(I) IN GENERAL.—The alien has
9 not abandoned the residence of the
10 alien in the United States.

11 “(II) PRESUMPTION.—

12 “(aa) IN GENERAL.—For
13 purposes of this subparagraph,
14 except as provided in item (bb),
15 the Secretary shall presume that
16 an alien has abandoned the resi-
17 dence of the alien in the United
18 States if, during the period of
19 conditional permanent resident
20 status, the alien is absent from
21 the United States for more than
22 730 days in the aggregate.

23 “(bb) EXCEPTION.—Not-
24 withstanding an absence from the
25 United States of more than 730

1 days in the aggregate during the
2 period of conditional permanent
3 resident status of an alien, the
4 presumption described in item
5 (aa) shall not apply if the alien
6 demonstrates, to the satisfaction
7 of the Secretary, that the alien
8 has not abandoned the residence
9 of the alien in the United States.

10 “(III) ACTIVE SERVICE.—Any
11 period during which an alien is absent
12 from the United States due to active
13 service in the Armed Forces shall not
14 be counted toward the 730 days re-
15 ferred to in subclause (II)(aa).

16 “(5) CITIZENSHIP REQUIREMENT.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), a conditional permanent
19 resident shall not have the conditional basis for
20 permanent residency removed or be adjusted to
21 permanent resident status unless the alien dem-
22 onstrates that the alien meets the requirements
23 described in paragraphs (1) and (2) of section
24 312(a).

1 “(B) EXCEPTION.—Subparagraph (A)
 2 shall not apply to an alien who is unable to
 3 meet the requirements referred to in that sub-
 4 paragraph due to—

5 “(i) a physical or developmental dis-
 6 ability; or

7 “(ii) a mental impairment.

8 “(6) PAYMENT OF FEDERAL TAXES.—

9 “(A) DEFINITION OF APPLICABLE FED-
 10 ERAL TAX LIABILITY.—In this paragraph, the
 11 term ‘applicable Federal tax liability’ means li-
 12 ability for Federal taxes imposed under the In-
 13 ternal Revenue Code of 1986, including any
 14 penalties and interest on taxes imposed under
 15 the Internal Revenue Code of 1986.

16 “(B) PAYMENT REQUIRED.—Not later
 17 than the date on which an alien submits an ap-
 18 plication for adjustment of status under para-
 19 graph (1), the alien shall satisfy any applicable
 20 Federal tax liability due and owing as of that
 21 date of submission.

22 “(7) SUBMISSION OF BIOMETRIC AND BIO-
 23 GRAPHICAL DATA.—

24 “(A) IN GENERAL.—The Secretary may
 25 not adjust the status of an alien under this sub-

1 section unless the alien submits to the Sec-
 2 retary biometric and biographical data in ac-
 3 cordance with procedures established by the
 4 Secretary.

5 “(B) ALTERNATIVE PROCEDURE.—The
 6 Secretary shall provide an alternative procedure
 7 for the submission of biometric and biographi-
 8 cal data for any applicant for adjustment of
 9 status who is unable to provide biometric or bi-
 10 ographical data due to a physical impairment.

11 “(8) BACKGROUND CHECKS.—

12 “(A) REQUIREMENT FOR BACKGROUND
 13 CHECKS.—The Secretary shall use biometric,
 14 biographical, and other data determined by the
 15 Secretary to be appropriate—

16 “(i) to conduct security and law en-
 17 forcement background checks of any alien
 18 applying for adjustment of status under
 19 this subsection; and

20 “(ii) to determine whether there is
 21 any criminal, national security, or other
 22 factor that would render the alien ineligible
 23 for adjustment of status.

24 “(B) COMPLETION OF BACKGROUND
 25 CHECKS.—The security and law enforcement

1 background checks under subparagraph (A)
2 shall be completed, to the satisfaction of the
3 Secretary, before the date on which Secretary
4 grants adjustment of status.

5 “(9) EXEMPTION FROM NUMERICAL LIMITA-
6 TIONS.—Nothing in this subsection or in any other
7 law applies a numerical limitation on the number of
8 aliens who may be eligible for adjustment of status
9 under this subsection.

10 “(10) ELIGIBILITY FOR NATURALIZATION.—

11 “(A) IN GENERAL.—An alien whose status
12 is adjusted under this subsection to that of an
13 alien lawfully admitted for permanent residence
14 may be naturalized in accordance with this Act
15 if the alien meets the applicable requirements of
16 the immigration laws.

17 “(B) ALIEN ENLISTEES.—For purposes of
18 section 316(a), an alien enlistee whose status is
19 adjusted under this subsection—

20 “(i) shall be considered to have satis-
21 fied the requirements of paragraphs (1)
22 and (2) of that section; and

23 “(ii) may apply for naturalization.

1 “(e) TREATMENT OF ALIENS MEETING REQUIRE-
2 MENTS FOR EXTENSION OF CONDITIONAL PERMANENT
3 RESIDENT STATUS.—

4 “(1) IN GENERAL.—With respect to an alien,
5 the Secretary may cancel removal and grant condi-
6 tional permanent resident status under subsection
7 (b)(1), and may extend conditional permanent resi-
8 dent status under subsection (c)(5), if, as of the
9 date of enactment of this section, the alien has satis-
10 fied each requirement described in subsections
11 (b)(1)(B) and (c)(5)(B).

12 “(2) ADJUSTMENT OF STATUS.—An alien may
13 apply for adjustment of status under subsection
14 (d)(1) if, during the entire period of conditional per-
15 manent resident status of the alien, the alien has
16 met the requirements of subsection (c)(5)(B).

17 “(f) EXCLUSIVE JURISDICTION.—

18 “(1) IN GENERAL.—Except as provided in para-
19 graph (2), the Secretary shall have exclusive juris-
20 diction to determine eligibility for relief under this
21 section.

22 “(2) EXCEPTION.—In the case of an alien who
23 has been placed in deportation, exclusion, or removal
24 proceedings before or after the date on which the
25 alien submits an application for cancellation of re-

1 moval and conditional permanent resident status or
2 adjustment of status under this section, the Attor-
3 ney General—

4 “(A) shall have exclusive jurisdiction to de-
5 termine eligibility for relief under this section;
6 and

7 “(B) shall assume all powers and duties of
8 the Secretary described in this section until the
9 date on which—

10 “(i) deportation, exclusion, or removal
11 proceedings are terminated; or

12 “(ii) a final order of deportation, ex-
13 clusion, or removal is entered.

14 “(3) EFFECT OF FINAL ORDER.—In the case of
15 an alien for whom a final order of deportation, ex-
16 clusion, or removal is entered, the Secretary shall re-
17 sume all powers and duties delegated to the Sec-
18 retary under this section.

19 “(4) EFFECT OF GRANT OF RELIEF.—In the
20 case of an alien with respect to whom a final order
21 of deportation, exclusion, or removal has been en-
22 tered, if the Secretary grants relief to the alien
23 under this section, the Attorney General shall re-
24 scind the final order of deportation, exclusion, or re-
25 moval.

1 “(g) CONFIDENTIALITY OF INFORMATION.—

2 “(1) PROHIBITION.—Except as provided in
3 paragraph (2), an officer or employee of the United
4 States shall not—

5 “(A) use the information furnished by an
6 individual in an application submitted to the
7 Secretary under this section to initiate removal
8 proceedings against any person identified in the
9 application;

10 “(B) issue any publication in which the in-
11 formation furnished by any particular individual
12 in an application under this section may be
13 identified; or

14 “(C) permit any person (other than the
15 Secretary, an officer or employee of the Federal
16 Government, or the alien) to examine an appli-
17 cation submitted under this section.

18 “(2) REQUIRED DISCLOSURE.—The Attorney
19 General or the Secretary, as applicable, shall provide
20 the information furnished by an individual in an ap-
21 plication under this section, and any other informa-
22 tion derived from the information, to—

23 “(A) a Federal, State, Tribal, or local law
24 enforcement agency, intelligence agency, na-
25 tional security agency, component of the De-

1 partment of Homeland Security, court, or
2 grand jury in connection with a criminal inves-
3 tigation or prosecution, a background check
4 conducted pursuant to the Brady Handgun Vio-
5 lence Protection Act (Public Law 103–159; 107
6 Stat. 1536) (or an amendment made by that
7 Act), or for homeland security or national secu-
8 rity purposes, if—

9 “(i) the information is requested by
10 the Federal, State, Tribal, or local law en-
11 forcement agency, intelligence agency, na-
12 tional security agency, component of the
13 Department of Homeland Security, court,
14 or grand jury; and

15 “(ii) the provision of the information
16 is consistent with an information sharing
17 agreement or mechanism; or

18 “(B) an official coroner for purposes of af-
19 firmatively identifying a deceased individual
20 (whether or not the deceased individual is de-
21 ceased as a result of a crime).

22 “(3) FRAUD IN APPLICATION PROCESS OR
23 CRIMINAL CONDUCT.—Notwithstanding any other
24 provision of this subsection, information relating to
25 whether an alien seeking cancellation of removal or

1 conditional permanent resident status under this
 2 section has engaged in fraud in an application for
 3 relief or has, at any time, committed a crime may
 4 be used or released for immigration enforcement,
 5 law enforcement, or national security purposes.

6 “(4) PENALTY.—Any person who knowingly
 7 uses or publishes information, or permits informa-
 8 tion to be examined, in violation of this subsection
 9 shall be fined not more than \$10,000.

10 “(h) TREATMENT OF CONDITIONAL PERMANENT
 11 RESIDENTS FOR CERTAIN PURPOSES.—

12 “(1) IN GENERAL.—During the period in which
 13 an alien is in conditional permanent resident status,
 14 the alien shall be considered to be lawfully present
 15 for all purposes.

16 “(2) 5-YEAR ELIGIBILITY WAITING PERIOD
 17 UNDER PRWORA.—An alien who has met the re-
 18 quirements for adjustment of status from conditional
 19 permanent resident to lawful permanent resident
 20 under this section shall be considered to have com-
 21 pleted the 5-year period described in section 403 of
 22 the Personal Responsibility and Work Opportunity
 23 Reconciliation Act of 1996 (8 U.S.C. 1613) as of the
 24 date on which the adjustment of status is granted.

1 “(i) GAO REPORT.—Not later than 7 years after the
2 date of enactment of this section, the Comptroller General
3 of the United States shall submit to the Committee on
4 the Judiciary of the Senate and the Committee on the Ju-
5 diciary of the House of Representatives a report that in-
6 cludes the number of aliens—

7 “(1) who were eligible for cancellation of re-
8 moval or conditional permanent resident status
9 under subsection (b)(1);

10 “(2) who applied for cancellation of removal or
11 conditional permanent resident status under that
12 subsection;

13 “(3) who were granted conditional permanent
14 resident status under that subsection; and

15 “(4) whose status was adjusted to that of an
16 alien lawfully admitted for permanent residence
17 under subsection (d).

18 “(j) NATURALIZATION OF ALIEN ENLISTEES.—For
19 purposes of sections 328 and 329, an alien enlistee shall
20 be considered to have been lawfully admitted for perma-
21 nent residence, without regard to the conditional status
22 of that admission.”.

23 (b) MILITARY ENLISTMENT.—Section 504(b)(1) of
24 title 10, United States Code, is amended by adding at the
25 end the following:

1 “(D) An alien who is a conditional perma-
 2 nent resident (as defined in section 244A(a) of
 3 the Immigration and Nationality Act).”.

4 (c) CONFORMING AMENDMENT.—The table of con-
 5 tents for the Immigration and Nationality Act (8 U.S.C.
 6 1101 note) is amended by inserting after the item relating
 7 to section 244 the following:

 “Sec. 244A. Cancellation of removal of certain long-term residents who entered
 the United States as children.”.

8 **SEC. 5. GROUNDS OF INADMISSIBILITY AND DEPORT-**
 9 **ABILITY FOR ALIEN MEMBERS OF CRIMINAL**
 10 **GANGS OR CARTELS.**

11 (a) DEFINITION OF CRIMINAL GANG OR CARTEL.—
 12 Section 101(a) of the Immigration and Nationality Act (8
 13 U.S.C. 1101(a)) is amended—

14 (1) by striking the subsection designation and
 15 all that follows through “this Act—” and inserting
 16 the following:

17 “(a) IN GENERAL.—In this Act:”; and

18 (2) by adding at the end the following:

19 “(53) CRIMINAL GANG OR CARTEL.—The term
 20 ‘criminal gang or cartel’ means an ongoing group,
 21 club, organization, or association comprised of 5 or
 22 more individuals—

1 “(A)(i) that has as a primary purpose the
 2 commission of 1 or more of the criminal of-
 3 fenses described in section 220(b)(2); and

4 “(ii) the members of which engage, or have
 5 engaged during the 5 years immediately pre-
 6 ceding the most recent commission of an of-
 7 fense described in section 220(b)(2), in a con-
 8 tinuing series of offenses described in section
 9 220(b)(2); or

10 “(B) that has been designated as a crimi-
 11 nal gang or cartel under section 220(b)(1).”.

12 (b) INADMISSIBILITY.—Section 212(a)(2) of the Im-
 13 migration and Nationality Act (8 U.S.C. 1182(a)(2)) is
 14 amended by adding at the end the following:

15 “(J) ALIENS ASSOCIATED WITH CRIMINAL
 16 GANGS OR CARTELS.—Any alien is inadmissible
 17 who a consular officer, the Secretary of Home-
 18 land Security, or the Attorney General knows or
 19 has reason to believe—

20 “(i) is or has been a member of a
 21 criminal gang or cartel; or

22 “(ii) has participated in any activity
 23 of a criminal gang or cartel, knowing or
 24 having reason to know that the activity
 25 would promote, further, aid, or support the

1 illegal activity of the criminal gang or car-
2 tel.”.

3 (c) DEPORTABILITY.—Section 237(a)(2) of the Im-
4 migration and Nationality Act (8 U.S.C. 1227(a)(2)) is
5 amended by adding at the end the following:

6 “(G) ALIENS ASSOCIATED WITH CRIMINAL
7 GANGS OR CARTELS.—Any alien is deportable
8 who—

9 “(i) is or has been a member of a
10 criminal gang or cartel; or

11 “(ii) has participated in any activity
12 of a criminal gang or cartel, knowing or
13 having reason to know that the activity
14 would promote, further, aid, or support the
15 illegal activity of the criminal gang or car-
16 tel.”.

17 (d) DESIGNATION OF A CRIMINAL GANG OR CAR-
18 TEL.—

19 (1) IN GENERAL.—Chapter 2 of title II of the
20 Immigration and Nationality Act (8 U.S.C. 1182 et
21 seq.) is amended by inserting after section 219 the
22 following:

23 **“SEC. 220. DESIGNATION OF A CRIMINAL GANG OR CARTEL.**

24 “(a) DEFINITIONS.—In this section:

1 “(1) CLASSIFIED INFORMATION.—The term
2 ‘classified information’ has the meaning given the
3 term in section 1(a) of the Classified Information
4 Procedures Act (18 U.S.C. App.).

5 “(2) NATIONAL SECURITY.—The term ‘national
6 security’ means the national defense, foreign rela-
7 tions, or economic interests of the United States.

8 “(3) RELEVANT COMMITTEES.—The term ‘rel-
9 evant committees’ means—

10 “(A) the Committee on the Judiciary of
11 the Senate; and

12 “(B) the Committee on the Judiciary of
13 the House of Representatives.

14 “(4) SECRETARY.—The term ‘Secretary’ means
15 the Secretary of Homeland Security, in consultation
16 with the Attorney General.

17 “(b) DESIGNATION.—

18 “(1) IN GENERAL.—The Secretary may des-
19 ignate as a criminal gang or cartel a group, club, or-
20 ganization, or association comprised of 5 or more in-
21 dividuals if the Secretary makes a determination
22 that—

23 “(A) the group, club, organization, or asso-
24 ciation has as a primary purpose the commis-

1 sion of 1 or more criminal offenses described in
2 paragraph (2); and

3 “(B) the members of the group, club, orga-
4 nization, or association engage, or, during the 5
5 years immediately preceding the most recent
6 commission of an offense described in section
7 220(b)(2), have engaged in a continuing series
8 of offenses described in paragraph (2).

9 “(2) OFFENSES.—The criminal offenses de-
10 scribed in this paragraph, whether committed in vio-
11 lation of Federal, State, or foreign law and regard-
12 less of whether an offense occurred before, on, or
13 after the date of enactment of this section, are the
14 following:

15 “(A) FELONY DRUG OFFENSE.—A felony
16 drug offense (as defined in section 102 of the
17 Controlled Substances Act (21 U.S.C. 802)).

18 “(B) BRINGING IN AND HARBORING
19 ALIENS.—An offense described in section 274
20 (relating to bringing in and harboring certain
21 aliens).

22 “(C) AIDING OR ASSISTING ENTRY.—An
23 offense described in section 277 (relating to
24 aiding or assisting certain aliens to enter the
25 United States).

1 “(D) IMPORTATION FOR AN IMMORAL PUR-
 2 POSE.—An offense described in section 278 (re-
 3 lating to importation of an alien for an immoral
 4 purpose).

5 “(E) CRIME OF VIOLENCE.—A crime of vi-
 6 olence (as defined in section 16 of title 18,
 7 United States Code).

8 “(F) CRIME INVOLVING OBSTRUCTION,
 9 TAMPERING, RETALIATION, OR BURGLARY.—A
 10 crime involving—

11 “(i) obstruction of justice;

12 “(ii) tampering with, or retaliating
 13 against, a witness, victim, or informant; or

14 “(iii) burglary.

15 “(G) OTHER CRIMES.—Any conduct pun-
 16 ishable under—

17 “(i) section 1028 or 1029 of title 18,
 18 United States Code (relating to fraud and
 19 related activity in connection with identi-
 20 fication documents or access devices);

21 “(ii) sections 1581 through 1594 of
 22 that title (relating to peonage, slavery, and
 23 trafficking in persons);

1 “(iii) section 1951 of that title (relat-
2 ing to interference with commerce by
3 threats or violence);

4 “(iv) section 1952 of that title (relat-
5 ing to interstate and foreign travel or
6 transportation in aid of racketeering enter-
7 prises);

8 “(v) section 1956 of that title (relat-
9 ing to the laundering of monetary instru-
10 ments);

11 “(vi) section 1957 of that title (relat-
12 ing to engaging in monetary transactions
13 in property derived from specified unlawful
14 activity); or

15 “(vii) section 2312, 2313, 2314, or
16 2315 of that title (relating to interstate
17 transportation of stolen motor vehicles or
18 stolen property).

19 “(H) CONSPIRACY.—A conspiracy to com-
20 mit an offense described in subparagraphs (A)
21 through (G).

22 “(3) PROCEDURE.—

23 “(A) NOTIFICATION.—Not later than 7
24 days before the date on which the Secretary
25 designates a criminal gang or cartel under this

1 subsection, the Secretary shall submit to the
2 Speaker and minority leader of the House of
3 Representatives, the President pro tempore,
4 majority leader, and minority leader of the Sen-
5 ate, and the members of the relevant commit-
6 tees, by classified communication, a notice of
7 intent to designate the criminal gang or cartel
8 that describes the factual basis for the designa-
9 tion.

10 “(B) PUBLICATION IN THE FEDERAL REG-
11 ISTER.—Not later than 7 days after the date
12 described in subparagraph (A), the Secretary
13 shall publish notice of the designation in the
14 Federal Register.

15 “(4) RECORD.—

16 “(A) IN GENERAL.—In making a designa-
17 tion under this subsection, the Secretary shall
18 develop an administrative record.

19 “(B) CLASSIFIED INFORMATION.—

20 “(i) IN GENERAL.—In making a des-
21 ignation under this subsection, the Sec-
22 retary may consider classified information,
23 which, except as provided in clause (ii),
24 shall not be subject to disclosure for any

1 period during which the classified informa-
 2 tion remains classified.

3 “(ii) DISCLOSURE FOR JUDICIAL RE-
 4 VIEW.—For purposes of judicial review
 5 under subsection (d), classified information
 6 referred to in clause (i) may be disclosed
 7 to a court ex parte and in camera.

8 “(5) PERIOD OF DESIGNATION.—A designation
 9 under this subsection shall be effective until the date
 10 on which the designation—

11 “(A) is revoked under paragraph (7); or

12 “(B) set aside under subsection (d).

13 “(6) REVIEW OF DESIGNATION.—

14 “(A) PETITION FOR REVIEW.—

15 “(i) IN GENERAL.—The Secretary
 16 shall review the designation of a criminal
 17 gang or cartel under the procedures de-
 18 scribed in clauses (iii) and (iv) if the crimi-
 19 nal gang or cartel submits to the Secretary
 20 a petition for review not later than—

21 “(I) in the case of a designated
 22 criminal gang or cartel that has not
 23 previously submitted a petition for re-
 24 view under this subparagraph, the
 25 date that is 2 years after the date on

1 which the Secretary makes the des-
2 ignation; and

3 “(II) in the case of a designated
4 criminal gang or cartel that has pre-
5 viously submitted a petition for review
6 under this subparagraph, the date
7 that is 2 years after the date on which
8 the Secretary made a determination
9 under clause (iv) on the most recent
10 petition for review submitted by the
11 criminal gang or cartel.

12 “(ii) EVIDENCE.—Any group, club,
13 organization, or association designated as
14 criminal gang or cartel that submits a peti-
15 tion for review under this subparagraph
16 shall include in the petition evidence that
17 the group, club, organization, or associa-
18 tion does not meet the criteria for designa-
19 tion as a criminal gang or cartel under
20 paragraph (1).

21 “(iii) DETERMINATION.—

22 “(I) IN GENERAL.—Not later
23 than 180 days after the date on which
24 the Secretary receives a petition for
25 review under this subparagraph, the

1 Secretary shall make a determination
2 on the petition.

3 “(II) CLASSIFIED INFORMA-
4 TION.—

5 “(aa) IN GENERAL.—In
6 making a determination on a pe-
7 tition for review under this sub-
8 paragraph, the Secretary may
9 consider classified information,
10 which, except as provided in item
11 (bb), shall not be subject to dis-
12 closure for any period during
13 which the classified information
14 remains classified.

15 “(bb) DISCLOSURE FOR JU-
16 DICIAL REVIEW.—For purposes
17 of judicial review under sub-
18 section (d), classified information
19 referred to in item (aa) may be
20 disclosed to a court ex parte and
21 in camera.

22 “(III) PUBLICATION OF DETER-
23 MINATION.—Not later than 90 days
24 after the date on which the Secretary
25 makes a determination on a petition

1 for review under this clause, the Sec-
2 retary shall publish the determination
3 in the Federal Register.

4 “(IV) PROCEDURES.—A revoca-
5 tion of a designation by the Secretary
6 in accordance with a determination
7 under this subparagraph shall be
8 made in accordance with paragraph
9 (7).

10 “(B) OTHER REVIEW OF DESIGNATION.—

11 “(i) IN GENERAL.—Not later than 5
12 years after the date on which the Secretary
13 designates a criminal gang or cartel under
14 paragraph (1), in the case of a criminal
15 gang or cartel for which a review has not
16 been carried out under subparagraph (A),
17 the Secretary shall initiate a review of the
18 designation to determine whether to revoke
19 the designation under paragraph (7).

20 “(ii) PROCEDURES.—

21 “(I) IN GENERAL.—A review ini-
22 tiated by the Secretary under clause
23 (i) shall be carried out in accordance
24 with such procedures determined by
25 the Secretary to be appropriate.

1 “(II) JUDICIAL REVIEW.—A re-
 2 view under subclause (I) and the pro-
 3 cedures established under that sub-
 4 clause shall not be subject to judicial
 5 review.

6 “(iii) PUBLICATION OF RESULTS OF
 7 REVIEW.—Not later than 90 days after the
 8 date on which the Secretary makes a de-
 9 termination based on a review under this
 10 subparagraph, the Secretary shall publish
 11 the determination in the Federal Register.

12 “(7) REVOCATION BASED ON CHANGE IN CIR-
 13 CUMSTANCES.—

14 “(A) IN GENERAL.—With respect to a des-
 15 ignation under paragraph (1), the Secretary—

16 “(i) may revoke the designation at
 17 any time; and

18 “(ii) shall revoke the designation if,
 19 on completion of a review carried out
 20 under paragraph (6), the Secretary deter-
 21 mines that—

22 “(I) the criminal gang or cartel
 23 does not meet the criteria for designa-
 24 tion as a criminal gang or cartel
 25 under paragraph (1); or

1 “(II) the national security or the
2 law enforcement interests of the
3 United States warrants a revocation.

4 “(B) NOTIFICATION.—Not later than 7
5 days before revoking a designation under para-
6 graph (A), the Secretary shall submit to the
7 Speaker and minority leader of the House of
8 Representatives, the President pro tempore,
9 majority leader, and minority leader of the Sen-
10 ate, and the members of the relevant commit-
11 tees, by classified communication, a notice of
12 intent to revoke the designation describing the
13 basis for the revocation.

14 “(C) PUBLICATION IN THE FEDERAL REG-
15 ISTER.—Not later than 7 days after the date
16 described in subparagraph (B), the Secretary
17 shall publish a notice of revocation in the Fed-
18 eral Register.

19 “(D) RECORD.—

20 “(i) IN GENERAL.—In revoking a des-
21 ignation under this paragraph, the Sec-
22 retary shall develop an administrative
23 record.

24 “(ii) CLASSIFIED INFORMATION.—

1 “(I) IN GENERAL.—In revoking a
2 designation under this paragraph, the
3 Secretary may consider classified in-
4 formation, which, except as provided
5 in subclause (II), shall not be subject
6 to disclosure for any period during
7 which the classified information re-
8 mains classified.

9 “(II) DISCLOSURE FOR JUDICIAL
10 REVIEW.—For purposes of judicial re-
11 view under subsection (d), classified
12 information referred to in subclause
13 (I) may be disclosed to a court ex
14 parte and in camera.

15 “(E) EFFECTIVE DATE.—A revocation
16 under this paragraph shall take effect—

17 “(i) on the date specified in the notice
18 of revocation published under subpara-
19 graph (C); or

20 “(ii) if a date is not specified in the
21 notice of revocation, on the date on which
22 the notice of revocation is published in the
23 Federal Register.

24 “(8) EFFECT OF REVOCATION.—A revocation
25 under paragraph (7) shall not affect any action or

1 proceeding based on conduct that occurs before the
 2 effective date of the revocation.

3 “(9) USE OF DESIGNATION IN REMOVAL PRO-
 4 CEEDINGS.—The Attorney General shall not allow
 5 an alien in removal proceedings to raise, as a de-
 6 fense or an objection, a question relating to the va-
 7 lidity of a designation under paragraph (1).

8 “(c) MODIFICATIONS TO A DESIGNATION.—

9 “(1) IN GENERAL.—With respect to a designa-
 10 tion under subsection (b)(1), the Secretary may
 11 modify the designation if the Secretary determines
 12 that the criminal gang or cartel has—

13 “(A) changed name;

14 “(B) adopted a new alias;

15 “(C) dissolved and reestablished under 1
 16 or more different names; or

17 “(D) merged with another criminal gang
 18 or cartel.

19 “(2) PROCEDURE.—

20 “(A) NOTIFICATION.—Not later than 7
 21 days before the date on which the Secretary
 22 modifies the designation of a criminal gang or
 23 cartel under this subsection, the Secretary shall
 24 submit to the Speaker and minority leader of
 25 the House of Representatives, the President pro

1 tempore, majority leader, and minority leader of
2 the Senate, and the members of the relevant
3 committees, by classified communication, a no-
4 tice of intent to modify the designation describ-
5 ing the factual basis for the modification.

6 “(B) PUBLICATION IN THE FEDERAL REG-
7 ISTER.—Not later than 7 days after the date
8 described in subparagraph (A), the Secretary
9 shall publish notice of the modification in the
10 Federal Register.

11 “(C) CLASSIFIED INFORMATION.—

12 “(i) IN GENERAL.—In modifying a
13 designation under this subsection, the Sec-
14 retary may consider classified information,
15 which, except as provided in clause (ii),
16 shall not be subject to disclosure for any
17 period during which the classified informa-
18 tion remains classified.

19 “(ii) DISCLOSURE FOR JUDICIAL RE-
20 VIEW.—For purposes of judicial review
21 under subsection (d), classified information
22 referred to in clause (i) may be disclosed
23 to a court ex parte and in camera.

24 “(D) EFFECTIVE DATE.—Any modification
25 under this subsection shall take effect on the

1 date of publication of the modification under
2 subparagraph (B).

3 “(3) ADMINISTRATIVE RECORD.—The adminis-
4 trative record developed under subsection (b)(4)
5 shall be supplemented to include—

6 “(A) any modification under this sub-
7 section; and

8 “(B) any relevant information that sup-
9 ports the modification.

10 “(d) JUDICIAL REVIEW OF DESIGNATION.—

11 “(1) IN GENERAL.—Not later than 30 days
12 after the date on which a designation under sub-
13 section (b)(1), a determination under subsection
14 (b)(6)(A), or a modification under subsection (c) is
15 published in the Federal Register, a criminal gang
16 or cartel may seek judicial review of the designation,
17 determination, or modification, as applicable, in the
18 United States Court of Appeals for the District of
19 Columbia Circuit (referred to in this subsection as
20 the ‘court’).

21 “(2) BASIS OF REVIEW.—

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), judicial review under this
24 subsection shall be based only on the adminis-

1 trative record developed under subsection
2 (b)(4).

3 “(B) EXCEPTION.—The Government may
4 submit, for ex parte and in camera review, clas-
5 sified information used as a basis for—

6 “(i) a designation under subsection
7 (b)(1);

8 “(ii) a determination under subsection
9 (b)(6)(A); or

10 “(iii) a modification under subsection
11 (c).

12 “(3) SCOPE OF REVIEW.—The court shall hold
13 unlawful, and set aside, any designation under sub-
14 section (b)(1), determination under subsection
15 (b)(6)(A), or modification under subsection (c) that
16 is, as determined by the court—

17 “(A) arbitrary, capricious, an abuse of dis-
18 cretion, or otherwise not in accordance with the
19 law;

20 “(B) contrary to constitutional right,
21 power, privilege, or immunity;

22 “(C) in excess of statutory jurisdiction, au-
23 thority, or limitation;

24 “(D) short of statutory right;

25 “(E) lacking substantial support—

1 “(i) in the administrative record,
2 taken into consideration as a whole; or

3 “(ii) in classified information sub-
4 mitted to the court under paragraph
5 (2)(B); or

6 “(F) not in accordance with a procedure
7 required by law.

8 “(4) JUDICIAL REVIEW INVOKED.—The pend-
9 ency of an action for judicial review under this sub-
10 section shall not affect the application of this section
11 to a criminal gang or cartel unless the court issues
12 a final order setting aside the designation, deter-
13 mination, or modification.”.

14 (2) CONFORMING AMENDMENT.—The table of
15 contents for the Immigration and Nationality Act (8
16 U.S.C. 1101 note) is amended by inserting after the
17 item relating to section 219 the following:

“Sec. 220. Designation of a criminal gang or cartel.”.

18 (e) MANDATORY DETENTION OF ALIEN MEMBERS
19 OF CRIMINAL GANGS OR CARTELS.—

20 (1) IN GENERAL.—Section 236(c)(1) of the Im-
21 migration and Nationality Act (8 U.S.C. 1226(c)(1))
22 is amended—

23 (A) in subparagraph (A), by striking the
24 comma at the end and inserting a semicolon;

1 (B) in subparagraph (B), by striking the
 2 comma at the end and inserting a semicolon;

3 (C) in subparagraph (C), by striking “, or”
 4 and inserting a semicolon;

5 (D) in subparagraph (D), by striking the
 6 comma at the end and inserting “; or”; and

7 (E) by inserting after subparagraph (D)
 8 the following:

9 “(E) is inadmissible under section
 10 212(a)(2)(J) or deportable under section
 11 237(a)(2)(G),”.

12 (2) ANNUAL REPORT.—Not later than March 1
 13 of each year (beginning 1 year after the date of en-
 14 actment of this Act), the Secretary, after consulta-
 15 tion with the appropriate Federal agencies, shall
 16 submit a report to the Committee on the Judiciary
 17 of the Senate and the Committee on the Judiciary
 18 of the House of Representatives that includes the
 19 number of aliens detained under subparagraph (E)
 20 of section 236(c)(1) of the Immigration and Nation-
 21 ality Act (8 U.S.C. 1226(c)(1)) during the preceding
 22 calendar year.

23 (f) RELIEF BASED ON GANG AFFILIATION.—

24 (1) INAPPLICABILITY OF RESTRICTION ON RE-
 25 MOVAL TO CERTAIN COUNTRIES.—Section

1 241(b)(3)(B) of the Immigration and Nationality
2 Act (8 U.S.C. 1231(b)(3)(B)) is amended—

3 (A) by redesignating clauses (i) through
4 (iv) as items (aa) through (dd), respectively,
5 and indenting the items appropriately;

6 (B) in the matter preceding item (aa) (as
7 so redesignated), by striking “apply to an alien
8 deportable under section 237(a)(4)(D) or if the
9 Attorney General decides that—” and inserting
10 the following: “apply—

11 “(i) to an alien—

12 “(I) described in section
13 212(a)(2)(J)(i);

14 “(II) described in section
15 237(a)(2)(G)(i); or

16 “(III) who is deportable under
17 section 237(a)(4)(D); or

18 “(ii) if the Attorney General deter-
19 mines that—”; and

20 (C) in the undesignated matter following
21 item (dd) (as so redesignated)—

22 (i) in the first sentence, by striking
23 “clause (ii)” and inserting “item (bb)”;
24 and

1 (ii) in the third sentence, by striking
 2 “clause (iv)” and inserting “item (dd)”.

3 (2) INELIGIBILITY FOR ASYLUM.—Section
 4 208(b)(2)(A) of the Immigration and Nationality
 5 Act (8 U.S.C. 1158(b)(2)(A)) is amended—

6 (A) in clause (v), by striking “; or” and in-
 7 serting a semicolon;

8 (B) by redesignating clause (vi) as clause
 9 (vii); and

10 (C) by inserting after clause (v) the fol-
 11 lowing:

12 “(vi) the alien is described in section
 13 212(a)(2)(J)(i) or section 237(a)(2)(G)(i);
 14 or”.

15 (g) TEMPORARY PROTECTED STATUS.—

16 (1) IN GENERAL.—Section 244 of the Immigra-
 17 tion and Nationality Act (8 U.S.C. 1254a) is amend-
 18 ed—

19 (A) by striking “Attorney General” each
 20 place it appears and inserting “Secretary of
 21 Homeland Security”;

22 (B) in subsection (c)(2)(B)—

23 (i) in clause (i), by striking “, or” and
 24 inserting a semicolon;

1 (ii) in clause (ii), by striking the pe-
 2 riod at the end and inserting “; or”; and

3 (iii) by adding at the end the fol-
 4 lowing:

5 “(iii) the alien is described in section
 6 212(a)(2)(J) or section 237(a)(2)(G).”;

7 and

8 (C) in subsection (d)—

9 (i) in paragraph (2)—

10 (I) in the first sentence, by strik-
 11 ing “Subject to paragraph (3), such
 12 documentation” and inserting “The
 13 documentation referred to in para-
 14 graph (1)”;

15 (II) in the second sentence, by
 16 striking “(under paragraph (3))”;

17 (ii) by striking paragraph (3);

18 (iii) by redesignating paragraph (4) as
 19 paragraph (3); and

20 (iv) in paragraph (3) (as so redesign-
 21 ated), by striking “An alien provided”
 22 and inserting the following:

23 “(A) IN GENERAL.—Except as provided in
 24 subparagraph (B), the Secretary of Homeland
 25 Security may detain an alien provided tem-

1 porary protected status under this section, as
 2 determined by the Secretary to be appropriate
 3 under the law.

4 “(B) EXCEPTION.—An alien provided”.

5 (2) CONFORMING AMENDMENT.—Section
 6 244(b)(3)(B) of the Immigration and Nationality
 7 Act (8 U.S.C. 1254a(b)(3)(B)) is amended in the
 8 second sentence by striking “is effective in accord-
 9 ance with subsection (d)(3), but”.

10 (h) SPECIAL IMMIGRANT JUVENILE VISAS.—Section
 11 101(a)(27)(J)(iii) of the Immigration and Nationality Act
 12 (8 U.S.C. 1101(a)(27)(J)(iii)) is amended—

13 (1) in subclause (I), by striking “; and” and in-
 14 serting a semicolon;

15 (2) in subclause (II), by striking the semicolon
 16 at the end and inserting “; and”; and

17 (3) by adding at the end the following:

18 “(III) no alien described in sec-
 19 tion 212(a)(2)(J) or section
 20 237(a)(2)(G) shall be eligible for any
 21 immigration benefit under this sub-
 22 paragraph;”.

23 (i) PAROLE.—Section 212(d)(5) of the Immigration
 24 and Nationality Act (8 U.S.C. 1182(d)(5)) is amended—

1 (1) by striking “Attorney General” each place
2 it appears and inserting “Secretary of Homeland Se-
3 curity”;

4 (2) by striking the paragraph designation and
5 all that follows through “in his discretion” in sub-
6 paragraph (A) and inserting the following:

7 “(5) PAROLE.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraphs (B) and (C) and in section
10 214(f), the Secretary of Homeland Security
11 may”; and

12 (3) by adding at the end the following:

13 “(C) ALIENS ASSOCIATED WITH CRIMINAL
14 GANGS OR CARTELS.—

15 “(i) IN GENERAL.—Except as pro-
16 vided in clause (ii), the Secretary of Home-
17 land Security shall not parole into the
18 United States an alien described in section
19 212(a)(2)(J).

20 “(ii) EXCEPTION.—The Secretary of
21 Homeland Security may parole into the
22 United States an alien described in section
23 212(a)(2)(J) if—

24 “(I) the alien is assisting or has
25 assisted the Government in a law en-

1 forcement matter, including a criminal
2 investigation; and

3 “(II) the presence of the alien in
4 the United States is required by the
5 Government for purposes of such as-
6 sistance.”.

7 (j) APPLICABILITY.—The amendments made by this
8 section shall apply to conduct that occurs before, on, or
9 after the date of enactment of this Act.

10 **SEC. 6. BORDER ACCESS ROADS.**

11 (a) CONSTRUCTION.—

12 (1) IN GENERAL.—The Secretary shall com-
13 mence and complete the construction of roads along
14 the southern border to facilitate safe and swift ac-
15 cess for U.S. Customs and Border Protection per-
16 sonnel to access the border for purposes of patrol
17 and apprehension.

18 (2) TYPES OF ROADS.—The roads constructed
19 under paragraph (1) shall include—

20 (A) access roads;

21 (B) border roads;

22 (C) patrol roads; and

23 (D) Federal, State, local, and privately
24 owned roads.

1 (b) MAINTENANCE.—The Secretary, in partnership
2 with local stakeholders, shall maintain roads used for pur-
3 poses of patrol and apprehension.

4 (c) POLICY GUIDANCE.—The Secretary shall—

5 (1) develop policies and guidance for docu-
6 menting agreements with landowners relating to the
7 construction of roads under subsection (a), as the
8 Secretary determines to be necessary;

9 (2) share the policies and guidance developed
10 under paragraph (1) with each Border Patrol Sector
11 of U.S. Customs and Border Protection;

12 (3) document and communicate the process and
13 criteria for prioritizing funding for operational roads
14 not owned by the Federal Government; and

15 (4) assess the feasibility of options for address-
16 ing the maintenance of non-Federal public roads, in-
17 cluding any data needs relating to such mainte-
18 nance.

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